

**IN THE  
SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1931**

**J. F. LAY, ET AL.  
Plaintiffs in Error.**

**E. C. LAY, ET AL.  
Defendants in Error.**

**BRIEF FOR PLAINTIFFS IN ERROR ON MOTION  
TO DISMISS OR AFFIRM.**

**WM. I. MCKAY,  
JOHN C. BEYRON,  
Attorneys for Plaintiffs in Error.**

## INDEX TO HEADS.

	Page
Statement of Case -----	1-9
Agreed Statement of Facts -----	9-10-32-33
Motion to Dismiss -----	11
First Assignment of Error -----	11-12
Second Assignment of Error -----	12-15
Third Assignment of Error -----	15-26
Motion to Affirm -----	26

## ARGUMENT.

	Page
Decision holding valid voluntary assignment of claim against United States contrary to Section 3477 of Revised Statutes, presents federal question, is tantamount to decision against its validity and is re-examinable upon writ of error -----	11
The judgment of Court of Claims is the law of the case and res adjudicata of the question at issue----	12
Heirs of R. M. Lay, Jr., estopped by his conduct and concluded by judgment of Court of Claims to claim property in question -----	12-13
Decision, refusing effect to judgment of United States Court of Claims adjudging property in question to be that of person through whom plaintiffs in error claim, presents federal question, is a decision against the validity of an authority under the United States and is re-examinable upon writ of error-----	14
Decision, holding Section 4 of Act of Congress of March 4, 1915, invalid, presents a federal question, is a decision against the validity of a statute of the United States and is re-examinable upon a writ of error, as an independent question -----	15-18
Only plaintiffs in error have right to contest claim for additional attorneys' fees -----	18
This Court's jurisdiction of one federal question in the case gives it jurisdiction of all federal questions----	22
State Supreme Court assumed all three of federal	

## ARGUMENT—Continued.

	Page
questions to be presented and decided them against plaintiffs in error -----	24-25
So-called fee-contracts not binding on estate-----	24
Section 4 of Act of March 4, 1915, constitutional-----	25
Ground for motion to affirm is frivolous-----	26

## TABLE OF CASES.

	Page
Bailey v. United States, 109 U. S. 430, 27 L. Ed. 988--	27
Bates v. Bodie, 245 U. S. R. 520-----	22
Bohanan v. Nebraska, 118 U. S. 231, 30 L. Ed. 71----	24
Clopton v. Gholson, 53 Miss. 466 -----	25
Conde v. York, 168 U. S. 642, 42 L. Ed. 611 -----	26
Crescent City Live Stock Co. v Butchers' Union Slaughter House Co., 120 U. S. 141, 30 L. Ed. 614--	14
Cumberland Glass Mfg. Co. v. De Witt, 237 U. S. 447, 59 L. Ed. 1042 -----	15
Cyc. Vol. 18, pp. 212 and 247-249-----	13 and 25
Freeman on Judgments, Vol. 1, 4th Ed., Section 249--	13
Goodman v. Niblack, 102 U. S. 556, 26 L. Ed. 229----	27
Hines v. Potts, 56 Miss., 346 -----	25
Hobbs v. McLean, 117 U. S. 567, L. Ed. 940-----	27
Home for Incurables v. City of New York, 187 U. S. 155, 47 L. Ed. 117 -----	25
Manhattan Commercial Co. v. Paul, 111 N. E. R. 76--	26
McGowan v. Parish, 237 U. S. 285, 59 L. Ed. 955-----	23-24-28
National Bank of Commerce v. Downie, 218 U. S. 345, 54 L. Ed. 1065 -----	28
Nutt v. Knutt, 200 U. S. 12, 50 L. Ed. 348 -----	27-28
Price v. Forrest, 173 U. S. 410, 43 L. Ed. 749 -----	27
Rogers v. Hennepin County, 240 U. S. 184, 60 L. Ed. 594	26
Section 3477 of Revised Statutes-----	26-29-30
Section 4 of Act of Congress of March 4, 1915-----	22-25
Section 2137, Mississippi Code 1906 -----	5

# **TABLE OF CASES—Continued**

	Page
Section 237, Judicial Code, as amended September 6, 1916 -----	15-23
Section 2108, Mississippi Code 1906 -----	18
Sections 2124, 2125, 2126, 2127 and 2131, Mississippi Code 1906 -----	16-17
Spofford v. Kirk, 97 U. S. 484, 24 L. Ed. 1032-----	11-28
United States Constitution, Section 1 of Article IV--	14
United States v. Gillis, 95 U. S. 407, 24 L. Ed. 503----	12
West Side Belt R. Co. v. Pittsburgh Constr. Co., 219 U. S. 92, 55 L. Ed. 107 -----	15
York v. Conde, 42 N. E. 193 -----	26

IN THE  
**Supreme Court of the United States**

---

OCTOBER TERM, 1918.

---

**J. F. LAY, ET AL.**

Plaintiffs in Error.

vs. No.633.

**R. C. LAY, ET AL.**

Defendants in Error.

---

**BRIEF FOR PLAINTIFFS IN ERROR ON MOTION  
TO DISMISS OR AFFIRM.**

---

I.

**STATEMENT OF CASE.**

In this statement chronological order will conduce to clearness and logical order.

February 26, 1853, Congress enacted the statute that is now Section 3477 of the Revised Statutes.

During our late Civil War there resided in Scott county, Mississippi, a woman, Nancy Lay, a widow, with two sons, R. M. Lay, Sr., and Jas. G. Lay. The federal

army under General Sherman took some of Nancy Lay's personal property, whereupon there accrued to her a claim against the United States for compensation.

She presented her claim to the Southern Claims Commission in May, 1872, but that tribunal disallowed her claim for the reason that it had become barred by limitation, the time for the presentation of said claim to said tribunal having expired.

Nancy Lay had a grandson, a son of said Jas. G. Lay, R. M. Lay, Jr., now deceased, whose heirs, being among the defendants in error, contend, and the state trial and Supreme Courts found, that, during her lifetime, at least twenty years prior to the allowance of the claim or the issuance of the warrant therefore, she assigned and transferred to said R. M. Lay, Jr., her said claim against the United States. Nancy Lay died intestate in the year 1886, leaving surviving her, as her only legal heirs, her said two sons, R. M. Lay, Sr., and Jas. G. Lay.

On April 11, 1891, the said R. M. Lay, Jr., falsely pretending to be the administrator of Nancy Lay's estate and wholly without any color of right or authority, pretended to make a contract with George A. King, one of the defendants in error, an attorney, to prosecute said claim against the United States for a fee of fifty per centum of the amount recovered, to which the said R. M. Lay, Jr., made oath that the said Nancy Lay, decedent, was the "owner of the claim." And, on January 31, 1900, the same said R. M. Lay, Jr., again falsely pretending to be the administrator of Nancy Lay's estate and wholly without any color of right or authority, pretended to make a contract with George A. King and William B. King, attorneys, among the defendants in error, to prosecute said claim for a fee of fifty per centum of any amount recovered. Presumably, but surely and so treated by the attorneys, defendants in error, through-

out this litigation, the said second so-called fee-contract was in lieu of the said first so-called fee-contract, or the first was merged into the second; yet it will be specially noted that each and both of the so-called fee-contracts were attempted to be made before the said R. M. Lay, Jr., had been appointed or qualified as administrator of Nancy Lay's estate.

The said claim of Nancy Lay's estate was presented to the Fifty-Sixth Congress; and, by resolution of the Senate thereof, the said claim was, on February 4, 1901, referred to the Court of Claims for a finding and adjudication of the facts in accordance with Section One of an Act approved March 3, 1887, entitled "An Act to provide for the bringing of suits against the Government."

On March 4, 1901, her said grandson, R. M. Lay, Jr., was, by the chancery court of said Scott county, Mississippi, appointed the administrator of Nancy Lay's estate, after which no fee-contract was made, or attempted to be made, with any of said attorneys, among the defendants in error, by any one in any capacity whatever.

In and before said Court of Claims, under the said Senate reference thereto, the said R. M. Lay, Jr., as administrator of Nancy Lay's estate, filed and presented his petition against the United States in behalf of his decedent, Nancy Lay, as claimant, alleging, among other things, that he, the said R. M. Lay, Jr., was the administrator of Nancy Lay's estate, by appointment of the chancery court of Scott county, Mississippi, on March 4, 1901; "that the claimant (Nancy Lay's estate) is the sole owner of this claim and the only person interested therein; that no assignment or transfer of this claim, or of any part thereof or interest therein, has been made; that the claimant (Nancy Lay's estate) is justly entitled to the amount herein claimed from the United States."

In the year 1905 the said R. M. Lay, Sr., son of Nancy

Lay, deceased, died, validly testate, devising all his estate, real and personal, to plaintiffs in error; and in the year 1907 the said Jas. G. Lay, son of Nancy Lay, deceased, died, validly testate, also devising all his estate, real and personal, to the plaintiffs in error.

On February 18, 1907, the said case of Nancy Lay's estate against the United States was brought to a final hearing on its merits before said Court of Claims and the Court, upon the said petition and the evidence and hearing, finally found and adjudged, on February 25, 1907, that Nancy Lay was loyal and that the value of her property taken by the United States Army was \$2,804.

In the year 1908 the said R. M. Lay, Jr., died intestate; and his son, R. C. Lay, one of the defendants in error, was duly appointed administrator de bonis non of the estate of Nancy Lay, deceased, as successor of his said father as her administrator. Neither the said R. M. Lay, Jr., either as de facto or de jure administrator of Nancy Lay's estate, nor R. C. Lay, as administrator de bonis non of Nancy Lay's estate, ever made any fee-contract with any of the attorneys among the defendants in error.

The said finding and adjudication of the facts by the Court of Claims having been duly reported to the Congress, an appropriation was made by Act of Congress of March 4, 1915, in payment of said claim in favor of Nancy Lay's estate and further providing as follows:

“Sec. 4. That no part of the amount of any item appropriated in this bill, in excess of twenty per centum thereof, shall be paid or delivered to or received by any agent or agents, attorney or attorneys on account of services rendered or advances made in connection with said claim.

“It shall be unlawful for any agent or agents,

attorney or attorneys to exact, collect, withhold or receive any sum which in the aggregate exceeds twenty per centum of the amount of any item appropriated in this bill on account of services rendered or advances made in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding \$1000."

Shortly thereafter a treasury warrant, for the said sum allowed by the Court of Claims to Nancy Lay's estate and appropriated by Congress, was issued and paid to said R. C. Lay, as administrator de bonis non of Nancy Lay's estate, less twenty per centum thereof which was paid to the attorneys among the defendants in error. Having received the proceeds of the claim, the administrator de bonis non of Nancy Lay's estate indicated no intention of accounting therefor and distributing the same. Section 2137 of Mississippi Code of 1906, in material part, provides:

"Any person entitled to a distributive share of an intestate's estate...may, at any time after the expiration of twelve months from the grant of letters...of administration, petition the court therefor, setting forth his claim; and the administrator...and all persons interested as distributees...shall be cited to appear."

Thereupon, to the March term, 1916, of the chancery court of said Scott county, Mississippi, the plaintiffs in error, as the only persons "entitled to the distributive shares" of Nancy Lay's intestate estate, being the sole devisees under the wills of Nancy Lay's only two sons or heirs and distributees, petitioned the court therefor, setting forth their claim or title to said claim of Nancy

Lay's estate and its proceeds by operation of the law of descent and distribution from Nancy Lay, deceased, intestate, to her said two sons as her only heirs and distributees and from her said two sons, under their wills, to plaintiffs in error, as devisees thereunder, and making the defendants in error parties thereto, and praying, among other things, that the administrator de bonis non account for and distribute the proceeds of the claim of Nancy Lay's estate, that the heirs of said R. M. Lay, Jr., deceased, propound their claim, if any they had, and that the attorneys, among the defendants in error, do likewise, answer under oath being waived, and that, if any claims were propounded, they be disallowed. In response to said petition or bill of complaint the said administrator de bonis non of the estate of Nancy Lay, deceased, filed his first and final account, as such administrator, reciting the collection and receipt by him, as such administrator, from the United States of the sum of \$2,243.20 on the said claim of his decedent, Nancy Lay, against the United States, twenty per centum of the amount (\$2,804.) appropriated in payment of the claim, as allowed by the Court of Claims, having been paid to and accepted by George A. King, William B. King and Paul Johnson, attorneys, in accordance with the provisions of Section 4 of the said Act of appropriation, and that the said proceeds of said claim constituted all of the estate of Nancy Lay, deceased; and the said administrator de bonis non refers to the so-called fee-contracts of the attorneys and to the claim of the plaintiffs in error and prays the plaintiffs in error and said attorneys be made parties to the administration of said estate and that therein they propound their respective claims to the said proceeds of the said claim of Nancy Lay's estate and that he, as such administrator, be directed by the court as to the proper distribution thereof. And the heirs of R. M. Lay, Jr., deceased, the said grandson of Nancy Lay and the first or original administrator of her estate, said heirs being among the defendants in error, filed their

answer and cross-bill to the bill of complaint of plaintiffs in error, setting forth that, during her life time, the said Nancy Lay "assigned said claim against the Government to her grandson, R. M. Lay, Jr."; and they pray in their cross-bill, which does not waive answer under oath, that the claim of plaintiffs in error to the proceeds of said claim of Nancy Lay's estate be disallowed; that they, as the heirs of R. M. Lay, Jr., deceased, be decreed said proceeds by the alleged virtue of the assignment to R. M. Lay, Jr., by Nancy Lay in her lifetime of her said claim against the United States; "and that this court decide and decree whether or not the said attorneys (George A. King, William B. King and Paul Johnson, among the defendants in error) are entitled to the additional 30 per centum of said collection." To the legal sufficiency of the answer of the heirs of R. M. Lay, Jr., deceased, the plaintiffs in error filed exceptions; and to the cross-bill of the heirs of R. M. Lay, Jr., deceased, the plaintiffs in error filed an answer under oath denying the fact, and any legal or equitable effect, of the assignment of the said claim from Nancy Lay to R. M. Lay, Jr. In, and as a part of, said proceedings in the chancery court of Scott county, Mississippi, the attorneys, George A. King, William B. King and Paul Johnson, presented their claim for an additional thirty per centum of said proceeds, by the supposed virtue of the said two so-called fee-contracts, setting out said Section 4 of said appropriating Act of March 4, 1915, exhibiting with their petition copies of said so-called fee-contracts and also a duly authenticated copy of the said Senate reference to, and the proceedings and judgment of, the Court of Claims on the claim of Nancy Lay's estate against the United States. To this claim and petition of the attorneys for an additional thirty per centum of the said proceeds the plaintiffs in error, as the only lawful heirs of Nancy Lay and as the only lawful distributees and beneficiaries of her estate, filed and presented, without question or objection, their contest of and objection to the allowance

of any additional fees to the attorneys out of the said proceeds or estate of Nancy Lay, deceased, on the grounds that a reasonable fee had already been paid to them; that any additional fee would be unreasonable and in violation of said Section 4 of the Act of Congress of March 4, 1915; and that the so-called fee-contracts sued on were not binding on the estate of Nancy Lay, deceased.

On the said issues thus joined the cause went to final hearing before the chancellor of the original state court, both on depositions and oral testimony. When all the evidence was in and all the parties had rested or submitted the cause for final decree, the plaintiffs in error moved the chancellor for a final decree in their favor on the grounds that the pretended assignment or transfer of the claim of Nancy Lay against the United States to R. M. Lay, Jr., under which his heirs claim against plaintiffs in error, is null and void and contrary to Section 3477 of the Revised Statutes; that the allowance of additional fees to the attorneys was prohibited and made a crime by Section 4 of the Act of Congress of March 4, 1915, and also urged that the heirs of R. M. Lay, Jr., were estopped and concluded by the conduct of the administrator and by the final judgment of the Court of Claims adjudging the claim in question to belong to the estate of Nancy Lay, deceased. And the learned chancellor finally decreed in favor of the plaintiffs in error, as shown by the record.

Thereupon, the defendants in error appealed to the Supreme Court of Mississippi, which court, reversed and annulled the decree of the lower court and there entered a final decree in favor of the defendants in error, as shown by the reported opinion, pages 10 to 17, inclusive, of brief for defendants in error, and the judgment in the record. Whereupon, the plaintiffs in error petitioned for and obtained a writ of error to this Court, and assigned errors as appear in the assignment thereof in the record. And the defendants in error now move this Court either to dis-

miss the writ of error for want of jurisdiction in this Court, or to affirm the decree of the State Supreme Court on the ground of the frivolousness of the federal questions involved.

We submit the foregoing as an accurate and comprehensive statement of the case, and supplement the same by the following agreement:

### **AGREED STATEMENT OF FACTS.**

Supplementing the portions of the record, printed and submitted by the defendants in error for the purposes of their motions to dismiss or affirm, and in adjustment of controversies as to the record facts appearing in the statements thereof by the parties in their respective briefs, it is, therefore, agreed as follows:

1. That Nancy Lay died intestate in the year 1886.
2. That R. M. Lay, Jr., was appointed administrator of Nancy Lay's estate by the chancery court of Scott county, Mississippi, on March 4, 1901.
3. That Nancy Lay left surviving her, as her only heirs, her two sons, R. M. Lay, Sr., and Jas. G. Lay.
4. That neither R. M. Lay, Jr., nor his heirs are heirs of Nancy Lay, or distributees of her estate, as such.
5. That the proceeds of her said war claim were all of the property claimed by her estate in closing the administration thereof.
6. That the record does not show, nor tend to show, that the heirs of R. M. Lay, Jr., or the administrator de bonis non of Nancy Lay's estate, invited either of the state courts to allow the thirty per centum additional fees to

the attorneys, George A. King, William B. King and Paul Johnson; and that none of the defendants in error in anywise attempted to waive any objection, if any they had, to the allowance of such fees. The record further shows that defendants in error made no objection, at any time in the record to allowance of the additional 30% attorneys' fees.

7. That R. C. Lay was appointed administrator de bonis non of Nancy Lay's estate in the year 1908; and that he never executed or renewed either of the fee-contracts sued on by the attorneys above.

8. That where there is any other variance in the material facts, as between the statements thereof by the defendants in error and the plaintiffs in error in their respective briefs, the statement thereof by the plaintiffs in error shall control for the purposes of the motions to dismiss or affirm.

Agreed this October 19, 1918.

.....  
Attorney for Defendants in Error.

.....  
Attorneys for Plaintiffs in Error.

## **MOTIONS TO DISMISS OR AFFIRM.**

### **I.**

#### **MOTION TO DISMISS.**

The first error assigned is that

“The Supreme Court of Mississippi erred in holding and deciding: That the voluntary assignment of a claim against the United States, prior to the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof, was valid and effective, notwithstanding the provisions of Section 3477 of Revised Statutes of the United States, the appellees (plaintiffs in error) contending that such assignment was null and void under said Section of the Revised Statutes.”

We submit that in holding the oral, voluntary assignment in the case at bar to be valid and effective, contrary to the plain and mandatory provisions of Section 3477 of the Revised Statutes, and especially in view of the controlling force of the many, late, plain and unanimous decisions of this Court, *Spofford v. Kirk*, 97 U. S. 484, 24 L. Ed., 1032; *Nutt v. Knut*, 200 U. S. 12, 50 L. Ed., 348; and *National Bank of Commerce v. Downie*, 218 U. S. 345, 54 L. Ed., 1065, is tantamount to a “decision against the validity” of the statute, as contemplated in the first paragraph of Section 237 of the Judicial Code as amended September 6, 1916, with reference to writs of error. In view of the unmistakable terms of Section 3477, “too plain,” as said by this Court “to need construction,” and especially in view of the repeated application of the statute by this Court to cases exactly like the case at bar, no pretense of reasonable room is left for state courts to exercise themselves in so-called construction of

the statute; and to ignore its plain mandates and the decisions of this Court is to decide "against its validity" under the guise or name of so-called construction. However this may be, this question or assignment of error is most certainly brought within the jurisdiction of this Court by its unquestionable jurisdiction of the second and especially of the third questions or assignment of errors, which are treated hereinafter.

The second assignment of error is that

"The Supreme Court of Mississippi erred in holding and deciding: That the final judgment of the United States Court of Claims, adjudging the claim against the United States and its funds or proceeds, in question in said case, to be the property of the person (Nancy Lay) through whom appellees (plaintiffs in error) claim, had no effect, operation or application in said case, the appellees (plaintiffs in error) claiming in accordance with the said judgment of the Court of Claims and the appellants (defendants in error) to the contrary."

In the suit on this claim by R. M. Lay, Jr., as administrator of the estate of Nancy Lay, deceased, against the United States in the Court of Claims the one, main and all-important fact for finding and adjudication by that court was the title to or ownership of the claim. That the claim was the unassigned property of Nancy Lay's estate was an absolute *sine qua non* even to the maintenance of the suit and essential to any judgment or relief whatever and was essentially jurisdictional. *United States v. Gillis*, 95 U. S. 407, 24 L. Ed., 503. In the cited case, one Ryan owned a war claim against the United States; and, even prior to suit thereon, he attempted to assign the legal title thereto to one Gillis, who brought suit thereon in the Court of Claims, which court

erroneously allowed the claim, and the United States appealed to this Court. This Court reversed the judgment of the Court of Claims and dismissed the suit on the sole ground that Section 3477 rendered the assignment null and void. In view of the statute and of the decision of this Court in the Gillis case, *supra*, the suit of Nancy Lay's administrator against the United States in the Court of Claims was in the nature of a proceeding in rem to establish the ownership and status of the claim; and the final judgment of the Court of Claims, adjudging the claim against the United States, and its funds or proceeds, to be the unassigned property of Nancy Lay's estate, constitutes the law of the case and is conclusive *res adjudicata* in that and all subsequent proceedings in that and all other courts where the title to the claim or its proceeds comes in question. Section 249, Freeman on Judgments, Fourth Edition. R. M. Lay, Jr., was, and his heirs, among the defendants in error, as his privies, now are, completely estopped both by his conduct as administrator of Nancy Lay's estate, as specially found on the facts by the lower state court, and also by the judgment of the Court of Claims finally adjudging the essential and jurisdictional fact and right that the claim was the unassigned property of Nancy Lay's estate, a judgment rendered at the suit of R. M. Lay, Jr., as administrator of Nancy Lay's estate, and in direct response to his petition, oath and evidence, adduced by him, to that very one end and result.

“The law of estoppel denies to the personal representative (R. M. Lay, Jr., as administrator), who takes a just possession of property (the claim of Nancy Lay's estate) in his fiduciary capacity (as such administrator), the right subsequently to deny the title of his decedent (Nancy Lay) or set up adverse title to the injury of those beneficially interested” (the plaintiffs in error). 18 Cyc. p. 212, and the many authorities cited.

There seems to be no authority to the contrary of this proposition of law. Therefore, the heirs of R. M. Lay, Jr., among the defendants in error, as privies of their said ancestor, and estopped by the conduct of their ancestor and concluded by the final judgment of the Court of Claims, adjudging the claim and its proceeds to be the unassigned property of Nancy Lay's estate.

Moreover, under Section 1 of Article IV of the Federal Constitution, the said judgment of the United States Court of Claims is entitled to full Faith and Credit in the State Supreme Court in the case at bar. And such judgment of the United States Court of Claims constitutes such "an authority under the United States as, that the decision of the state court against its "validity" or effect in the case at bar, gives this Court jurisdiction to re-examine the same upon writ of error, *Crescent City Live-Stock Landing and Slaughter-House Co. et al. v. Butchers' Union Slaughter-House and Live-Stock Landing Co.*, 120 U. S. 141, 30 L. Ed., 614, in which this Court held:

"The question whether a state court has given due effect to the judgment of a court of the United States is a question arising under the Constitution and laws of the United States, and comes within the jurisdiction of the federal courts by proper process."

Within the very letter and spirit of the first paragraph of Section 237 of the Judicial Code as amended September 6, 1916, defining the jurisdiction of this Court upon writs of error, the decision of the State Supreme Court of Mississippi in the case at bar is "A final decree, where is drawn in question the validity of an authority exercised under the United States, and the decision is against its validity, and may be re-examined" in this Court "upon a writ of error." *Crescent City Live Stock Co. v. Butchers' Union Slaughter House Co.*, *supra*;

Cumberland Glass Mfg. Co. v. De Witt, 237 U. S. 447, 59 L. Ed., 1042. Therefore, this Court has jurisdiction, upon the writ of error, of this second federal question or assignment of error. West Side Belt R. Co. v. Pittsburgh Constr. Co., 219 U. S. 92, 55 L. Ed. 107.

The third assignment of error is that

“The Supreme Court of Mississippi erred in holding and deciding: That Section 4 of the Act of Congress of March 4, 1915, limiting to twenty per centum the amount of fees to be paid attorneys on account of services rendered in connection with the claim against the United States, in question in said case, was invalid and in violation of the Constitution of the United States.”

Of this federal question or third assignment of error this Court unquestionably has full and perfect jurisdiction upon the writ of error, within both the technical letter and spirit of the first paragraph of Section 237 of the Judicial Code as amended September 6, 1916, relating to the jurisdiction of this Court upon writs of error. By this assignment of error, in the very language of Section 237 of the Judicial Code as amended, there is properly and legally presented and submitted to be “re-examined” by this Court, “upon a writ of error,

“A final . . . decree in a suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a . . . statute of . . . the United States, and the decision is against (its) validity.”

A case more perfectly and unquestionably clothing this Court with full and complete jurisdiction of re-examination upon a writ of error can not be imagined; and this Court, having jurisdiction of the case or “decree”

on this federal question or assignment of error, thereby acquires full jurisdiction of the other two federal questions or assignments of error in the case at bar, however presented, whether by writ of error or by certiorari, in accordance with the universal rule that where a court, especially of equity, as in the case at bar, acquires jurisdiction of a case for one purpose it necessarily assumes jurisdiction of all questions or for all purposes, that is, of the whole case. Courts, especially of equity, do not take jurisdiction of cases in part or by piecemeal.

This Court will observe and bear in mind that the case at bar was one of exclusive equity jurisdiction in its inception in the original state court, and continued to be such in the Supreme Court of the state, and is the same in this Court. This Court will further note well and bear in mind that the case at bar was and is, in the language of our state Constitution and statutes vesting and defining the full jurisdiction of our state chancery courts, entirely and essentially a "matter of the administration" of Nancy Lay's estate, particularly with reference to the final accounting of her administrator, determining the amount, if any, of attorneys' fees to allow him credit for, and determining the proper and lawful distribution of the estate; and these proceedings were set in motion in response to a suit in the "matter of the administration" by the plaintiffs in error, as the only lawful heirs of Nancy Lay and the only lawful distributees of her estate, to compel an accounting and distribution by R. C. Lay, the administrator de bonis non of Nancy Lay's estate. In closing the administration of an estate our state statutes require and provide, in material part, as follows:

"Sec. 2124. When the estate has been administered by payment of the debts and the collection of the assets, it shall be the duty of the . . . administrator, . . . to make and file a final settlement of

the administration, by making out and presenting to the court, under oath, his final account....”

“Sec. 2125. The...administrator shall file with his final account a written statement, under oath, of the names of the heirs...of the estate....”

“Sec. 2126. And the final account so presented, with the statement as to parties, shall remain on file, subject to the inspection of any person interested; and summons shall be issued or publication be made for all parties interested, as in other suits in the chancery court, to appear..., and show cause, if any they can, why the final account ...of the administrator should not be allowed and approved.”

“Sec. 2127. ...the court shall examine the final account so presented and filed, hear the evidence in support of it, and the objections and evidence against it. If the court shall be satisfied that the account is correct...it shall make a final decree of approval and allowance, and shall, at the same time, order the...administrator to make distribution of the property in his hands.”

“Sec. 2131. In annual and final settlements, the...administrator shall be entitled to credit for such reasonable sums as he may have **paid** for the services of an attorney in the management or in behalf of the estate if the court be of opinion that the services were proper and rendered in good faith.”

In compliance with the above quoted state statutes the plaintiffs in error, as the only lawful heirs of Nancy Lay and as the only lawful distributees of her estate, were made parties to the matter of the administration of her estate; and, as such only lawful heirs and distributees of her estate, the plaintiffs in error presented their claim, right and title to the proceeds of the said war claim of Nancy Lay's estate. And, as aforesaid, the at-

torneys, George A. King, William B. King and Paul Johnson, among the defendants in error, filed and presented against her estate their claim for thirty per centum additional fees; and the administrator de bonis non very properly prayed for the directions of the court as to the lawful distribution of said proceeds, including the question as to whether or not the additional thirty per centum in fees should be allowed and paid to said attorneys. Section 2108 of our state Code provides, in material part, as follows:

“The . . . administrator, legatee, heir, or any creditor, may contest a claim presented against the estate . . . .”

By virtue of their right under the above statute, as the only lawful heirs of Nancy Lay, deceased, as well as by virtue of their right under the general law and premises, the plaintiffs in error, as the only heirs of Nancy Lay and as the only distributees and beneficiaries of her estate and of the proceeds of her said war claim, contested the said claim for additional fees of thirty per centum of the proceeds of Nancy Lay's said war claim, contesting and objecting to the allowance or payment of any additional fees, out of the proceeds arising from Nancy Lay's said war claim and now belonging to her estate and to the plaintiffs in error as the only lawful distributees thereof, on the ground, among others, that such allowance and payment of additional fees was prohibited and made a misdemeanor by said Section 4 of the Act of Congress of March 4, 1915, appropriating the money for the payment of the said claim of Nancy Lay's estate. The original state court disallowed the attorney's claim, holding said Section 4 of the Act of March 4, 1915, valid and effectual; but the state supreme court allowed the attorneys' claim, holding said Section 4 invalid as contrary to the Constitution of the United States, “where is drawn in question the validity of the statute of the

United States, and the decision is against its validity." Sec. 237 of Judicial Code as amended September 6, 1916. Of this federal question or assignment of error this Court has full and unquestionable jurisdiction upon the writ of error. Plaintiffs in error, as the only heirs of Nancy Lay, deceased, and as the only lawful distributees or beneficiaries of her estate and of the proceeds of her said war claim, had just as perfect a legal and equitable right to contest and resist the diversion of thirty per centum of the proceeds to the attorneys as they had to contest and resist the diversion and distribution of the whole fund to the heirs of R. M. Lay, Jr., deceased, under the null and void assignment. The two legal and equitable rights of the plaintiffs in error are distinct, independent, coordinate and coequal.

In demonstration of this position we have but to point out by the record that the case at bar is fundamentally and essentially a matter of closing the administration of Nancy Lay's estate. Both the original and the succeeding administrators of her estate treated and recognized the said war claim and its proceeds as belonging alone to her estate; the Court of Claims conclusively adjudged the jurisdictional fact that the claim was the unassigned property of her estate; the Congress made the appropriation in payment of the claim in favor of her estate; the Government issued and paid its warrant to her estate in the settlement of her claim; and in the case at bar, all of the parties thereto, in their pleadings and evidence, and the lower state court and the state supreme court, in their respective final decrees, treated and recognized the claim and its proceeds as an asset and the property of her estate, allowing the administrator of her estate his commissions and attorney's fees out of the proceeds; and the state supreme court enforced the so-called fee-contracts, alleged to have been made by the administrator of her estate, and ordered the administrator of her estate, as such, to pay the additional fees of thirty per

centum out of her estate. Moreover and conclusively, the attorneys, William B. King, George A. King and Paul Johnson, among the defendants in error, presented their said claim for the additional fees of thirty per centum against the estate of Nancy Lay, deceased, as such, and not otherwise nor against any other person; and the said attorneys presented their said claim alone against the estate of Nancy Lay, deceased, independently of, and in real and fundamental conflict with, the alleged assignment of the claim by Nancy Lay to R. M. Lay, Jr. No other true or record view of the case at bar is possible. Such, then, being the only and true nature of the case, precisely so treated and considered by every fiduciary, court, official or party that has in anywise touched the matter, therefore, the plaintiffs in error, as the sole heirs of Nancy Lay, deceased, and the sole distributees and beneficiaries of her estate, were and are the only persons who could or can lawfully contest the allowance of the additional fees of thirty per centum of the proceeds, claimed against the estate alone by the alleged virtue of a so-called fee-contract with the administrator of her estate. Therefore, the lawful right, vested exclusively in the plaintiffs in error, to contest the allowance of the additional attorney's fees for representing the estate in recovering on its claim, is a right really and essentially independent of any other question in the case at bar; and, therefore, this Court has full and complete jurisdiction of the third federal question or assignment of error, independently of, and as one of the coequal and coordinate questions with, the other federal questions in the case at bar. When this Court is reached for the re-examination of a case, the only and essential nature of the case, as treated and considered by all parties and the courts, can not be radically and fundamentally changed in order to question or affect the jurisdiction of this Court of the case. The state supreme court did not render, and could not have rendered, the decree it did render without deciding against the validity of section 4.

At page 45 of their brief defendants in error say:

“The defendants in error in this case invited the state court to allow the fee of fifty per cent. . . . and the defendants in error do not desire in any court to question the payment thereof.”

The accuracy of the quoted statement as of a fact of record is totally disproved and its effect, if any, if it were correct, is wholly eliminated by the “Agreed Statement of Facts” hereinabove set out. The defendants in error, not being among the lawful heirs of Nancy Lay nor among the lawful distributees of her estate, have no possible pretense of legal or equitable right or authority either to approve or disapprove of the amount of attorney’s fees to be credited to the administrator de bonis non of Nancy Lay’s estate, or to be paid to the attorneys. Such right is vested solely in the plaintiffs in error, as the only heirs of Nancy Lay and as the only lawful distributees of her estate, that is, of the proceeds of her said war claim. And no person or court can waive the provisions of said Section 4, which make it a misdemeanor to allow, pay or receive any additional fees.

But the defendants in error contend that, if this Court should hold that Section 3477 of Revised Statutes is inapplicable to the case at bar, then this Court would have no occasion to decide the question as to additional fees for the attorneys. This contention is untenable, in the present inquiry into this Court’s jurisdiction of the entire case or decree at bar. Their contention merely and purely begs one of the main questions in the case, that is, as to the legal title to the war claim and proceeds as between the heirs of R. M. Lay, Jr., deceased, the assignee under the null and void assignment of the war claim, and the plaintiffs in error, claiming the proceeds of Nancy Lay’s war claim by operation of the law of descent and distribution from Nancy Lay, intestate, to her

said two sons, as her sole heirs, and from her said two sons to plaintiffs in error as the sole devisees under the lawful wills of her said two sons.

As said lately by this Court, in *Bates v. Bodie*, 245 U. S. R. 520, in denying a motion to dismiss a writ of error on a similar ground,

“But this is the question in controversy. The decision of the Supreme Court of Nebraska is challenged for not according to the decree the credit it is entitled to and it is no answer to the challenge to say that the Supreme Court committed no error in responding to it and that, therefore, there is no federal question for review. *Andrews v. Andrews*, 188 U. S. 14. The motion to dismiss is denied.”

The fatal defect in their contention is that it entirely overlooks the all-important fact that the decision of the State Supreme Court as to Section 3477 of the Revised Statutes presents a federal question and is assigned as error, and of which this Court has jurisdiction by the full virtue of its unquestionable jurisdiction of the second and especially of the third assignments of error. And, moreover and conclusively, the question as to the right to the additional attorneys' fees was one of the main, independent, coequal and coordinate questions in the case.

But, if we correctly conceive their position, the defendants in error further contend that, if the federal question in the first assignment of error, as to Section 3477 of the Revised Statutes, is not re-examinable by this Court upon the writ of error, but only by certiorari, then, although this Court may have the jurisdiction to re-examine the federal question in the decision against the validity of Section 4 of the appropriating Act of March 4, 1915, presented in the third assignment of error prop-

erly upon the writ of error, still this Court would not have jurisdiction to re-examine the first assignment of error, as to Section 3477, because not presented by certiorari. In other words, their contention is that, if in one and same case there are two classes of federal questions or errors assigned, the one re-examinable upon a writ of error and the other reviewable by certiorari, both the processes must be obtained in one and the same case in order for this Court to acquire jurisdiction of both classes of federal questions, that is, that the jurisdiction of this Court of one and the same case on the one class of federal questions will not draw to its jurisdiction the other class of federal questions; but that in the one and the same case both processes, writ of error and certiorari, must be sued out, and thereby, in the one and the same case, have two separate and distinct processes, records, sets of briefs, hearings et cetera, that is, make two distinct and independent cases out of one and the same case, with the possible or conceivable situation of two different and conflicting judgments in one and the same case, if no consolidation was made. We submit that, by Section 237 of the Judicial Code as amended September 6, 1916, Congress never intended to create such utter, expensive and troublesome confusion and overthrow so many fundamental principles of jurisprudence, especially of equity jurisprudence. The case at bar being one of equity jurisprudence, and this particular inquiry being one of equity jurisdiction, we invoke the operation of the general principle, which needs no citation of authority that a court of equity which has obtained jurisdiction of a controversy on any ground or for any purpose will retain such jurisdiction for the purpose of administering complete relief and doing entire justice with respect to the subject-matter. *McGowan v. Parish*, 237 U. S. 285, 59 L. Ed., 955. We also invoke the maxim that "equity delights to do justice and not by halves." Equity also prevents a multiplicity of suits. Section 237 of the Judicial Code as amended most beneficently and unquestion-

ably contemplates the bringing to this Court for re-examination or review, in proper cases, the entire "final judgment or decree" of state courts by one proper process or proceeding, and not the bringing to this Court of the different classes of federal questions, affecting one and the same "final judgment or decree," by two or more different and distinct processes or proceedings. The right of re-examination or review is from the entire "final judgment or decree," as affected by the nature of the decision of the federal questions upon which it rests, and not from the class or nature of the federal questions. When this Court has jurisdiction of a case on account of one or a particular federal question involved, the thing that it has jurisdiction of is the entire case, that is, the entire "final judgment or decree" in the case, as affected by all federal questions which erroneously affect such "final judgment or decree" and which have been competently raised and saved and assigned as error. Therefore, this Court in the case at bar has full and complete jurisdiction of each and all of the three assignments of error in this case. *McGowan v. Parish*, 237 U. S. 285, 59 L. Ed., 955.

We shall not discuss the question as to the validity or constitutionality of said Section 4 of the appropriating Act of March 4, 1915, against the validity of which the state supreme court decided, further than to observe that such discussion, inasmuch as it is of first impression in this Court and is on the merits of the case, should be reserved for hearing on the merits, and not on this motion. *Bohanan v. Nebraska*, 118 U. S. 231, 30 L. Ed., 71; *Bates v. Bodie*, *supra*. We remark, however, in passing, that when it is noted that the attorneys, claiming additional fees, did not have and could not have had a legally binding fee-contract with the estate of Nancy Lay, deceased; that the so-called fee-contracts sued on were both executed by R. M. Lay, Jr., under the false pretense of being administrator of Nancy Lay's estate

and prior to his appointment or qualification as such; that even, if the said so-called fee-contracts sued on had been executed by R. M. Lay, Jr., as the lawful administrator of Nancy Lay's estate, such contracts would not bind her estate, for want of legal authority in the administrator so to bind the estate, 18 Cyc. 247-249, Clopton, Adm., vs. Gholson, 53 Miss. 466, Hines vs. Potts, 56 Miss., 346; that, therefore, the attorneys had no contract rights or obligations to be impaired by Section 4 of the appropriating Act of March 4, 1915; that Nancy Lay's claim had once become barred and lost by limitation; and that her claim was by an act of free grace of Congress, a gratuity, restored and paid; from these and other considerations it clearly appears that Congress had the constitutional right to make the appropriation on the condition, or to attach the provision, of Section 4 of the Act and that Section 4 is not possibly unconstitutional.

Therefore, this Court has full and complete jurisdiction of all three of the federal questions or assignments of error in the case at bar, and the motion to dismiss should be denied. In *Home For Incurables v. City of New York*, 187 U. S. 155, 47 L. Ed., 117, this Court said:

"Later cases in this Court have expressed the additional thought that if the highest court of the state assumes that the record sufficiently presents a question of federal right and decides against the party claiming such right, we will look no further, and will proceed to a consideration of that question, unless the decision is made to rest, in part, upon some ground of local law, sufficient enough in itself to sustain the judgment, independently of any question of federal right."

The most cursory inspection of the opinion of the State Supreme Court in the case at bar demonstrates that the State Supreme Court assumed that all three of the

federal questions or assignments of error were sufficiently presented and decided against plaintiffs in error on all of them, wherefore, this Court "will look no further, and will proceed to a consideration of those questions." *Rogers v. Hennepin County*, 240 U. S. 184, 60 L. Ed. 594.

## II.

### **MOTION TO AFFIRM.**

Defendants in error also move this Court to affirm on the ground that the federal questions involved "are so frivolous as not to need further argument." May we borrow the language of the defendants in error to reply that the ground of their motion is "so frivolous as not to need further argument?" Under the above head, defendants in error contend that Section 3477 of the Revised Statutes has no application to the case at bar. This contention, in the language of this Court in a different case, "is so absolutely devoid of merit as to be frivolous, and has been so explicitly foreclosed by decisions of this Court as to leave no room for real controversy." We shall very briefly comment on the cases cited by defendants in error.

The first case cited, and especially relied upon, is *York v. Conde* (N. Y.) 42 N. E. 193. The opinion of the New York court on the construction and application of the statute is of no authority in the case at bar; if so, under the controlling force of subsequent decisions of this Court, *National Bank of Commerce v. Downie*, *supra*, the New York court explicitly and completely overruled its decision in the cited case by its late case of *Manhattan Commercial Co. v. Paul*, 111 N. E. R. 76.

The case next cited is *Conde v. York*, 168 U. S. 642, 42 L. Ed. 611. What this Court said in the cited case on the construction and application of Section 3477 is of no

authority, because this Court held that it had no jurisdiction of the case, neither party claiming any right under Section 3477. See *Nutt v. Knut*, 200 U. S. 12, 50 L. Ed. 348.

The cited case of *Goodman v. Niblack*, 102 U. S. 556, 26 L. Ed., 229, is not in point for defendants in error, the case holding, as is contended for by plaintiffs in error by inheritance and devise, that the assignment of a claim against the United States, merely by operation of law as an incident of a general assignment for the benefit of creditors, is not prohibited by the statute. The statute prohibits the voluntary assignment of claims.

The cited case of *Hobbs v. McLean*, 117 U. S. 567, 29 L. Ed. 940, is not in point for the very patent reason that this court held that articles of partnership entered into before, and only in contemplation of, a contract with the Government was, of course, not an assignment of any claim against the government, because then no contract with, or claim against, the government existed.

The cited case of *Bailey v. United States*, 109 U. S. 430, 27 L. Ed. 988, is not in point, for the all-sufficient reason that this Court explicitly held:

“In the case before us no question arises as to the transfer or assignment of a claim against the government.”

In printing the brief of defendants in error their printer in error substituted the article “the” for the word “no” in the above quotation.

The cited case of *Price v. Forrest*, 173 U. S. 410, 43 L. Ed. 749, has no application, because it is another case of an assignment merely by operation of law, as distinguished from a voluntary assignment by act of a person.

The cited case of *McGowan v. Parish*, 237 U. S. 285, 59 L. Ed. 955, is not in point because this Court held that the "consent decree" constituted a waiver of the question as to the effect of the statute. The case of *Portuguese American Bank v. Wells*, 242 U. S. 7, 61 L. Ed. 116, does not involve the statute. We shall not comment on their citations of a few state court decisions, for the reason that state decisions are of no authority whatever in the construction or application of the federal statute.

Now in utter rout of the defendants in error as to the construction and application of Section 3477 we cite the statute and the following decisions of this Court thereon: *Spofford v. Kirk*, 97 U. S. 484, 24 L. Ed. 1032; *Nutt v. Knut*, 200 U. S. 12, 50 L. Ed. 348; and *National Bank of Commerce v. Downie*, 218 U. S. 345, 54 L. Ed. 1065. These three cases foreclose any further question but that Section 3477 rendered absolutely null and void the assignment under which the defendants in error claim the proceeds of Nancy Lay's war claim against the United States. In fact the citation of the *Bank-Downie* case, *supra*, decided in November, 1910, is sufficient, as it exhaustively reviews and approves the *Gillis*, the *Spofford-Kirk* and the *Nutt-Knut* cases, *supra*, as the only decisions of this Court on the precise point at issue in the case at bar.

In the *Spofford-Kirk* case, *supra*, *Kirk*, having a claim against the United States, drew, before its allowance, two orders for \$600, each on his attorneys, payable out of the funds to come into their hands from the allowance and payment of the claim, one order in favor *J. S. Wharton* and the other in favor of *E. R. Taylor*, both of which orders were accepted by the drawees, attorneys, payable out of any monies coming into their hands from the United States from the allowance and payment of the claim of *Kirk*. The two accepted and endorsed orders were, about a month after their dates, offered for sale to *Spofford*, who, on the assurance that *Kirk's* claim had been allowed, became the assignee or holder of both orders

for value, and in entire good faith. Subsequently, Kirk, in a letter to his attorneys, recognized the orders as valid. But after the issuance of the treasury warrant, he refused to indorse the warrant or admit the validity of the orders. Thereupon, Spofford filed a bill in the Supreme Court of the District to compel the payment of the orders from the proceeds of the claim. The bill was dismissed on account of Section 3477, and, for the same, sole reason, the decision was by this Court affirmed. It will be specially noted that the dates of the orders and their acceptance were prior to the allowance of the claim, and that the assignment of the orders to Spofford was after the allowance of the claim by the Government, and that the controversy in court over the proceeds of the claim arose after the allowance of the claim by the Government and after the issuance of the warrant. The United States was not a party to the Spofford-Kirk case, had not the remotest interest in it and had allowed the claim and issued its warrant in payment before the controversy between Spofford and Kirk in court ever arose. The Spofford-Kirk case in material fact or in principle can not be distinguished from the case at bar; and, if Spofford's rights and strong equities as an innocent purchaser after the allowance of the claim could avail him nothing on account of Section 3477, then what shadow of right can the heirs of R. M. Lay, Jr., have to claim the proceeds of Nancy Lay's claim by a null and void assignment, a voluntary assignment, made, if made at all, nearly a quarter of a century before the allowance of the claim or the issuance of the warrant!

The case of Nutt v. Knut, *supra*, was a suit by an attorney on a fee-contract, similar in terms and provisions to those in the case at bar, against the estate of a deceased claimant against the United States. The fee-contract sued on was executed before the allowance of the claim; but the suit thereon was begun after the allowance and payment of the claim. The validity of the fee-contract was assailed on the ground that it violated

Section 3477 in that it attempted to give a lien on the claim or its proceeds prior to its allowance. Our state supreme court erroneously held the fee-contract valid on its face, notwithstanding Section 3477. This Court took jurisdiction upon a writ of error, and pointed out our state court's plain error in holding the fee-contract valid on its face, and this Court held the fee-contract void on its face insofar as it attempted to create a lien on the claim or its proceeds prior to its allowance, as in violation of Section 3477. The United States was not a party to the suit, was not in the remotest way interested in the suit and had allowed the claim, issued its warrant and paid it long before the controversy arose in the courts over the attorney's fees. The very same contentions that are now made by the defendants in error as to Section 3477 were expressly urged before this Court in the Nutt case, but so vainly and groundlessly as not to merit or receive any response to the point from this Court.

The case of *National Bank of Commerce v. Downie*, *supra*, is the latest and final word from this Court on the point at issue. It was a case where a firm, which afterward became bankrupt, had some unallowed claims against the United States which unallowed claims the firm attempted to assign to certain banks as collateral security for loans of money. Thereafter the assignor-firm became bankrupt and the suit arose over the title to the proceeds of claims against the United States as between the trustee in bankruptcy and the banks as assignees of the claims before their allowance. In its decision of the case on Section 3477 this Court reviewed and approved the *Gillis* case, the *Spofford-Kirk* case and the *Nutt-Knut* case, *supra*, quoting freely from each of them, and of the *Spofford-Kirk* case saying that it is "frequently referred to in later decisions and always followed." And this Court concludes its final and exhaustive review of the point in the case at bar by saying:

"The present cases are not assignments which,

by operation of law, created an interest in the assignor's claims against the United States. They are clean-cut cases of a voluntary transfer of claims against the United States, before their allowance, in direct opposition to the statute. If any regard whatever is to be had to the intention of Congress, as manifested by its words,—too clear, we think, to need construction,—we must hold such a transfer to be absolutely null and void, and as not, in itself, passing to the appellants any interest, present or remote, legal or equitable, in the claims transferred. . . . Any other holding will effect a repeal of the statute by mere judicial construction, in disregard of the plain, unequivocal intent of Congress, as indicated by the statute.”

What imaginable rights or equities have the legally and equitably estopped heirs of R. M. Lay, Jr., under a null and void voluntary assignment without consideration as compared or contrasted with the real and superior equities of the innocent purchaser Spofford against his assignor in the Spofford-Kirk case, *supra*, or those of the innocent Banks, in the Bank-Downie case, *supra*, which had loaned large sums of money on the assignments as collateral security? Equity follows the law. It is not a question as to when the controversy arises between the assignor and assignee; but the sole question is as to the nature of the assignment and especially as to when the assignment was made. Again, the ground of the motion to affirm is “so frivolous as not to need further argument.”

Therefore, we respectfully pray and submit that the motions to dismiss or affirm be denied and overruled.

Respectfully submitted,

*J. C. Russell*.....  
*Wm. D. McKay*.....  
Attorneys for Plaintiffs in Error.

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1918.

---

No. 633.

---

**J. F. LAY, ET AL.**  
Plaintiffs in Error.

v.

**R. C. LAY, ET AL.**  
Defendants in Error.

---

We have this day received of Wm. I. McKay and John C. Bryson, Attorneys of Record for Plaintiffs in Error, in the above styled cause, copy of brief for the plaintiffs in error on motions to dismiss or affirm.

**WILLIAM H. WATKINS,**  
Attorney for Defendants in Error.

October 19, 1918.